IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 11866 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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SANJAYBHAI ALIAS KALIYO MADHUSUDAN BHAGAT - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MS SUBHADRA G PATEL for Petitioner(s) : 1,MR.ALKESH N SHAH for Petitioner(s) : 1,
MR IM PANDYA, AGP for Respondent(s) : 1,
RULE SERVED for Respondent(s) : 2,
RULE NOT RECD BACK for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 21/09/2006

ORAL JUDGMENT

1. Commissioner of Police, Vadodara, passed an order on 03.05.2006, in exercise of powers under section 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (PASA Act" for short), detaining the detenu under the provisions of the said Act.

2. The detaining authority took into consideration two prohibition cases registered against the detenu. The detaining authority considered the activities of the detenu as that of a bootlegger as defined under PASA Act

and observed that the detenu is required to be immediately prevented from pursuing his activities, which are detrimental to public order. The authority also considered the possibility of resorting to less drastic remedies and came to conclusion that detention under PASA Act is the only remedy that can be resorted to.

3. The petitioner challenges the order of detention on various grounds. Learned Advocate appearing for the petitioner has restricted his arguments to the ground that so far as the offences are concerned, they relate to bootlegging and there is no disturbance to public order. He submitted that the petition may, therefore, be allowed.

4. Mr. I.M Pandya, learned Assistant Government Pleader, has opposed this petition.

5. So far as the offences are concerned, they all relate to prohibition cases and in light of the decision recorded by Division Bench of this Court in Letters Patent Appeal No.223 of 2000 dated 22nd August 2000, in absence of any contemporaneous material, the satisfaction recording damage to public health and disturbance to public order cannot be considered as genuine. The satisfaction, therefore, for exercise of powers under the PASA Act for detaining cannot be considered as genuine

and cannot be upheld.

6. In the result, the petition is allowed. The impugned order of detention dated 03.05.06, passed against the detenu, is hereby quashed. The detenu is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no order as to costs.

7. Direct service permitted.

(K.S. JHAVERI, J.)

Divya//